



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: FOP - 173751

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on April 19, 2016, under Wis. Admin. Code §HA 3.03, to review a decision by the Manitowoc County Department of Human Services regarding FoodShare benefits (FS). The hearing was held on June 21, 2016, by telephone. The record was held open post-hearing to allow the agency to submit additional evidence. The agency submitted additional documentation on July 6, 2016 and the record was closed.

The issue for determination is whether the agency properly seeks to recover an overissuance of FS benefits from the Petitioner as follows:

\$ 676.00 for the period of May 1, 2010 – September 30, 2010  
\$ 876.00 for the period of February 1, 2012 – May 31, 2012  
\$ 876.00 for the period of July 6, 2012 – November 30, 2012  
\$1,279.00 for the period of June 5, 2013 – November 30, 2013  
\$1,929.00 for the period of March 1, 2014 – December 31, 2014

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, WI 53703

By: [REDACTED]

Manitowoc County Department of Human Services  
3733 Dewey Street  
Manitowoc, WI 54221-1177

ADMINISTRATIVE LAW JUDGE:  
Debra Bursinger  
Division of Hearings and Appeals

### **FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Manitowoc County.
2. On April 22, 2010, the Petitioner applied for FS benefits. She reported a household of 4 including herself, her husband TD and two children. She reported her employment at [REDACTED] 16 hours/pay period at \$10/hour. She reported TD's employment at [REDACTED] 1533 and employment at [REDACTED] 31.75 hours/pay period at \$16.14/hour and shift pay of \$.50/hour.
3. On May 7, 2010, the agency issued a Notice of Decision to the Petitioner informing her that her application for FS benefits was approved and that her household was eligible for FS benefits of \$17/month effective May 1, 2010. The notice informed her that this was based on a household size of four and household income in May, 2010 of \$550.09/week for TD from [REDACTED] and \$1,482.30/month in unemployment compensation benefits for the Petitioner. Gross counted household income was determined to be \$3,229.69. The notice further informed the Petitioner that if the household's total gross monthly income exceeded \$3,675, she must report it to the agency by the 10<sup>th</sup> day of the next month.
4. Effective October 31, 2010, the Petitioner's FS case closed due to a failure to provide requested income verification.
5. On April 8, 2011, the Petitioner applied for FS benefits. She reported a household of 4 including herself, her husband TD and two children. She reported TD's employment at [REDACTED] 40 hours/week at \$16.50/hour. Petitioner did not supply requested income verification. The case closed effective May 17, 2011.
6. On August 12, 2011, the Petitioner applied for FS benefits. She reported a household of 4 including herself, her husband TD and two children. She reported TD's employment at [REDACTED] 1533 and employment at [REDACTED] 40 hours/pay period at \$17.24/hour. Petitioner did not supply requested income verification. The case was closed effective October 18, 2011.
7. On January 15, 2012, the Petitioner applied for FS benefits. She reported a household of 4 including herself, her husband TD and two children. She reported no employment and no income for the household.
8. On January 30, 2012, the agency conducted a phone interview with TD. He reported he was laid off from his job and [REDACTED]. He reported the Petitioner was employed at [REDACTED]. On February 3, 2012, the Petitioner contacted the agency regarding requested employment verifications. She reported TD is receiving unemployment compensation.
9. On June 1, 2012, the Petitioner's FS case was closed due to failure to submit requested income verification.
10. On July 16, 2012, the Petitioner applied for FS benefits. She reported a household size of four including herself, her husband TD and two children. She reported that TD received unemployment compensation benefits of \$363/week.
11. On July 23, 2012, the agency issued a notice of decision to the Petitioner informing her that her household was approved to receive FS benefits of \$214 for July, 2012 and \$370/month effective August 1, 2012. This was based on household income of \$1,452/month from TD's unemployment compensation. The notice informed the Petitioner of the requirement to report to

- the agency by the 10<sup>th</sup> day of the next month if gross monthly household income exceeded \$1,920.83.
12. On or about September 20, 2012, the agency received information that the Petitioner had been receiving unemployment compensation benefits and was starting new employment at [REDACTED]. On September 21, 2012 and October 17, 2012, the agency issued Notices of Proof to the Petitioner requesting verification of employment and income at [REDACTED] and information regarding unemployment compensation benefits. The due date for the requested information was October 1, 2012 for the employment verification and October 26, 2012 for the unemployment compensation information.
  13. On November 19, 2012, the agency issued a Notice of Decision to the Petitioner that FS benefits would end effective December 1, 2012 due to household income exceeding the income limit. The agency determined the gross monthly household income was \$2,416.60 based on unemployment compensation benefits for the Petitioner and TD.
  14. On June 5, 2013, the Petitioner applied for FS benefits. She reported a household of three including herself, her husband TD and one child. She reported income that included TD's unemployment compensation benefits of \$363/week. On June 13, 2013, the agency issued a Notice of Decision to the Petitioner that her household would receive FS benefits of \$210 for June, 2013 and \$243/month effective July 1, 2013. This was based on gross household income of \$1,560/month from TD's unemployment compensation benefits. The notice informed the Petitioner of the requirement to report to the agency by the 10<sup>th</sup> day of the next month if gross household income exceeded \$2,069/month.
  15. On October 9, 2013, the Petitioner's FS renewal was processed. No changes were reported in employment or income. The agency obtained information that the Petitioner had new employment at [REDACTED] that had not been reported. On October 10, 2013, the agency requested verification of Petitioner's employment and income at [REDACTED]. The due date for the information was October 21, 2013. On November 30, 2013, the Petitioner's FS case closed due to failure to provide requested verification.
  16. On January 10, 2014, the Petitioner applied for FS benefits. She reported a household size of three including herself, her husband TD and one child. Petitioner reported that she is working but TD is not. She reported that TD's unemployment compensation ended. FS benefits were issued to the Petitioner for January and February, 2014.
  17. On February 18, 2014, the agency received a call from the boyfriend of Petitioner's daughter AD, who reported that he is currently living in the Petitioner's household and is the father of AD's unborn child. AD and boyfriend were added to the Petitioner's household.
  18. On February 19, 2014, the agency issued a notice of decision to the Petitioner informing her that the household of five would receive FS benefits of \$365/month effective April 1, 2014. This was based on gross monthly household income of \$2,343 from the Petitioner's employment at [REDACTED]. The notice informed the Petitioner of the requirement to report to the agency by the 10<sup>th</sup> day of the next month if gross monthly household income exceeded \$2,193.40.
  19. On March 29, 2014, the child support agency informed the FS agency that AD's boyfriend is employed at [REDACTED]. On March 31, 2014, the agency issued a notice of decision to the Petitioner that FS benefits would end effective May 1, 2014 due to household income exceeding the program limit.
  20. On April 3, 2014, the Petitioner contacted the agency to report that AD's boyfriend moved out and that AD had her baby. AD's baby was added to the Petitioner's household. On April 4, 2014, the agency issued a notice of decision to the Petitioner that the household would receive \$365/month in FS benefits based on a household size of five (Petitioner, TD, AD,

- Petitioner's/TD's child and AD's child). This was based on gross household income of \$2,343 from Petitioner's employment at [REDACTED]. The notice also informed the Petitioner of the requirement to report to the agency if gross monthly household income exceeded \$2,193.40.
21. On June 16, 2014, the agency processed the Petitioner six month report form. The only change reported by the Petitioner was AD's employment at [REDACTED]. On June 17, 2014, the agency issued a Notice of Proof Needed to the Petitioner requesting verification of AD's employment and income at [REDACTED]. The due date for the information was June 26, 2014. The Petitioner's FS case closed effective July 1, 2014 due to failure to provide requested verification.
  22. On July 14, 2014, the Petitioner provided the requested employment verification. On July 16, 2014, the agency issued a notice of decision to the Petitioner that her household would receive FS benefits of \$201 for July, 2014 and \$365/month effective August 1, 2014. This was based on household income of \$2,384 for July, 2014 which included Petitioner's income from [REDACTED] and AD's income from [REDACTED] and \$2,343 for August, 2014 which included Petitioner's income from [REDACTED]. The notice also informed the Petitioner of the requirement to report to the agency if gross household income exceeded \$2,987.
  23. On December 1, 2014, the agency conducted a renewal phone interview with TD. He reported no changes in household composition. He reported that he is not employed. He reported the Petitioner was employed at [REDACTED]. The agency noted that wages were reported for AD from [REDACTED], [REDACTED] and [REDACTED]. TD reported that AD no longer worked for any of those employers. TD reported that AD works at the [REDACTED]. On December 2, 2014, the agency issued a Notice of Proof Needed to the Petitioner requesting verification of AD's employment and income at the [REDACTED]. The due date for the information was December 11, 2014. Verification was not provided. The Petitioner's FS case closed January 1, 2015.
  24. On April 28, 2015, the Petitioner applied for FS benefits. She reported a household of three including herself, TD and one child. She reported her employment at [REDACTED]. On May 1, 2015, the agency issued a Notice of Proof Needed requesting employment and income verification from [REDACTED]. The due date for the information was May 29, 2015. On June 1, 2015, the agency denied the Petitioner's application for FS benefits due to failure to provide requested verification.
  25. On August 31, 2015, the Petitioner applied for FS benefits. On September 1, 2015, the agency conducted a phone interview with the Petitioner. She reported a household of three including herself, TD and one child. She reported that she was laid off from [REDACTED] on August 26, 2015 and filed for unemployment compensation benefits. She reported TD was not working. On September 1, 2015, the agency received information that TD works at [REDACTED]. The agency added an employment screen to the Petitioner's case and issued a Notice of Proof Needed requesting employment and income verification for TD for [REDACTED] and unemployment compensation verification for the Petitioner. The due date for the information was September 30, 2015.
  26. On September 2, 2015, the Petitioner contacted the agency and stated that TD does not work at [REDACTED].
  27. On September 18, 2015, the agency called [REDACTED]. The worker was informed that TD would be working that evening at 8:30 p.m.
  28. On September 23, 2015, the agency received a verification that TD was "never employed" at [REDACTED]. The form was not signed or completed by the employer.
  29. On October 1, 2015, the agency issued a notice of decision to the Petitioner informing her that FS application was denied due to failure to provide requested verification.

30. On October 1, 2015, the Petitioner applied for FS benefits. She reported a household of three including herself, TD and one child. She reported no employment or income for the household. The agency conducted a phone interview with the Petitioner. She reported that her unemployment compensation benefits were pending. She was advised of the need for verification regarding TD's employment at [REDACTED]. Petitioner reported that TD never worked at [REDACTED].
31. On October 1, 2015, the agency referred the Petitioner's case for investigation regarding TD's employment at [REDACTED].
32. On October 1, 2015, the agency received an employer verification that stated TD was never employed at [REDACTED]. It was purported to be signed by [REDACTED], owner of [REDACTED].
33. On November 4, 2015, the agency investigator interviewed the owner of [REDACTED]. The investigator testified that he was informed TD has been employed at [REDACTED] since 1987, working almost every weekend.
34. On November 6, 2015, [REDACTED] provided 5 years of employee schedules to the investigator. He also provided a summary of wages paid to TD from March, 2010 – present.
35. On November 11, 2015, the investigator interviewed [REDACTED]. The investigator testified that he was informed TD tended bar for [REDACTED] but was not compensated for his services. The investigator testified that [REDACTED] further stated that TD worked at [REDACTED] for years.
36. On November 11, 2015, the Petitioner contacted the investigator and stated that TD left the household on October 25, 2015 and they are getting divorced.
37. On November 11, 2015, the investigator interviewed TD. The investigator testified that TD informed him that TD lives with the Petitioner. TD stated that he started working at [REDACTED] in 1987. He started tending bar there in 2010. He stated that he earns \$8.50/hour and averages \$10/night in tips. He stated he works Friday, Saturday and Sunday nights. TD denied that he and the Petitioner are divorcing.
38. On January 22, 2016, the agency issued FS Overpayment Notices and worksheets to the Petitioner informing her that the agency intends to recover the following overissuances of FS benefits:
- \$ 676 for the period of May 1, 2010 – September 30, 2010
  - \$ 876 for the period of February 1, 2012 – May 31, 2012
  - \$ 876 for the period of July 16, 2012 – November 30, 2012
  - \$1,279 for the period of June 5, 2013 – November 30, 2013
  - \$1,929 for the period of March 1, 2014 – December 31, 2014
- 39.
40. On or about July 6, 2016, the agency submitted documentation of actual wages TD is purported to have received from [REDACTED] as follows:

**2010**

March, 2010	\$400.00
April, 2010	\$340.00
May, 2010	\$330.00
June, 2010	\$350.00

July, 2010        \$340.00

August, 2010    \$320.00

## **2012**

September, 2012        \$320.00

October, 2012         \$330.00

November, 2012        \$300.00

December, 2012        \$350.00

## **2013**

Jan. 2013                \$360.00

Feb. 2013                \$400.00

March, 2013             \$500.00

April, 2013              \$600.00

May, 2013 – Aug. 2013 \$700.00/month

Sept. 2013 – Dec. 2013 \$800.00/month

## **2014**

Jan. 2014 – Dec. 2014 \$900/month

## **DISCUSSION**

The federal regulation concerning FS overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FS due to an intentional program violation, an inadvertent household error (also known as a “client error”), or an agency error (also known as a “non-client error”). 7 C.F.R. § 273.18(b), emphasis added; see also, FoodShare Wisconsin Handbook (FSH), §7.3.2.1. Generally speaking, whose “fault” caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. § 273.18(b); see also, FSH, §§ 7.3.2.1 – 7.3.2.2. If the overpayment is due to client error, the agency may recover an overissuance for six years prior to the date of discovery of the overpayment. FSH, § 7.3.2. In this case, the agency seeks to recover an overissuance back to May, 2011. The date of discovery in this case is October 1, 2015. The agency’s action is within the six year look-back period.

In a Fair Hearing concerning the propriety of an overpayment determination, the county agency has the burden of proof to establish that the action taken by the county was proper given the facts of the case. The petitioner must then rebut the county agency's case and establish facts sufficient to overcome the county agency's evidence of correct action.

In this case, the agency contends that the Petitioner failed to report TD’s employment at [REDACTED]. The agency presented evidence to demonstrate that from May, 2010 – October, 2015, there was no report by the Petitioner that TD worked at [REDACTED]. The agency presented numerous applications and evidence of contacts with the Petitioner. At no time was employment at [REDACTED] reported by the Petitioner.

When the agency received information that TD may have worked at [REDACTED], it commenced an investigation. The investigator testified that he interviewed the owner of [REDACTED], the owner of [REDACTED], TD and the Petitioner as part of his investigation. He testified that the owner of [REDACTED], the owner of [REDACTED] and TD all confirmed that TD worked at [REDACTED] from 1987 – present. The investigator testified that he received copies of the employee schedules from the owner of [REDACTED] showing that TD worked at the bar. He testified that he received a summary of actual wages that were paid to TD. Post-hearing, the agency submitted a one page ledger purporting to show the actual monthly wages paid by [REDACTED] to TD.

All of the evidence presented by the county in this case is hearsay. Hearsay evidence is admissible in administrative proceedings; however, in circumstances such as these, when the reliability and probative force of hearsay evidence is suspect and that hearsay evidence is to form the sole basis for a finding of fact, the Wisconsin Supreme Court has held that uncorroborated hearsay does not constitute substantial evidence upon which to base a finding of fact. *Gehin v. Wisconsin Group Ins. Bd.*, 2005 WI 16, ¶¶ 53-56 & 58, 278 Wis. 2d 111, 692 N.W.2d 572; See also, *Williams v. Housing Auth. of City of Milwaukee*, 2010 WI App 14, ¶¶ 14 & 19, 323 Wis. 2d 179, 187 & 189, 779 N.W.2d 185 ("[u]ncorroborated hearsay evidence, even if admissible, does not by itself constitute substantial evidence."). In these circumstances the Wisconsin Supreme Court has held that hearsay must be corroborated by nonhearsay evidence. *Gehin*, ¶¶ 82 & 92. This is the law of the State of Wisconsin as set forth by the Supreme Court of this state. An ALJ does not have discretion to disregard it.

In this case, the only witness was the investigator from [REDACTED]. The agency did not have the owner of [REDACTED] or TD testify. It is not clear why the agency would not have these important witnesses who could easily provide non-hearsay testimony at the hearing. The agency relies upon the assertions of the [REDACTED] owner and TD that TD worked at [REDACTED] as a basis for the overpayment and the Petitioner explicitly disputes those assertions. The agency relied upon a "summary" of wages paid to TD without requesting specific information from [REDACTED] to corroborate that information. At the time of the hearing, the agency did not offer any other evidence to corroborate the assertion that TD worked at the bar or any evidence to support the wage information. I noted to the Department representatives that the case was mere hearsay. The agency requested leave to submit additional documentation which was sent following the hearing. This reliance on very vague assertions as to TD's wages from [REDACTED] is especially troublesome in this case. The Petitioner's household income varied significantly during the overpayment period and was often close to the program limit. The wages from [REDACTED], if any, would be extremely important to this case and the agency failed to use due diligence in obtaining and analyzing this information. I note that after receiving what is purported to be the actual monthly wage information, the agency did not submit revised overpayment worksheets to demonstrate that it properly determined the overpayment. In fact, the ledger sheet submitted by the agency does not even contain wages for some of the months for which the agency contends there was an overpayment (ie September, 2010, July, 2012 and August, 2012).

It appears that the agency could have presented sufficient reliable information to prove this case without much difficulty; instead it presented only uncorroborated hearsay evidence. I find, therefore, that the agency has not met its burden of demonstrating that there was an overpayment of FS benefits to the Petitioner based on unreported employment and income.

### **CONCLUSIONS OF LAW**

The agency failed to meet its burden to demonstrate that there was an overissuance of FS benefits to the Petitioner based on unreported employment and income for the periods of May 1, 2010 – September 30, 2010, February 1, 2012 – May 31, 2012, July 6, 2012 – November 30, 2012, June 5, 2013 – November 30, 2013 and March 1, 2014 – December 31, 2014.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the agency to take all administrative steps necessary to rescind the following overpayment claims against the Petitioner: Claim # [REDACTED], Claim # [REDACTED], Claim # [REDACTED], Claim # [REDACTED] and Claim #190455211. These actions shall be completed as soon as possible but no later than August 6, 2016.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 28th day of July, 2016

\s \_\_\_\_\_  
Debra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals





**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on July 28, 2016.

Manitowoc County Department of Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability